

AUDIT REPORT  
FOR  
INVEST NEBRASKA FUND

December 2004

Prepared by:

The Nebraska Department of Revenue

December 28, 2004

Hon. Mike Johanns, Governor  
Senator L. Patrick Engel, Chair, Executive Board  
Patrick J. O'Donnell, Clerk of the Legislature

Gentlemen:

The attached audit report has been prepared by the Nebraska Department of Revenue in compliance with the provisions of section 77-5544, which states:

(1) By January 1, 2005, and each January 1 every five years thereafter for so long as there are companies that have qualified for benefits and remain within the entitlement period, there shall be an audit to determine compliance with the Invest Nebraska Act.

This audit was conducted by the Nebraska Department of Revenue in compliance with the provisions of section 77-5544, which states:

(1) If a qualified independent accounting firm cannot be located or engaged to conduct such audit, then such audit shall instead be performed by the department.

The Department used the normal bid process, but no qualifying firms responded. The audit was performed by Motor Fuel auditors from a separate division of the Department.

As required in 77-5544 (3), I have reviewed this audit and verify that this report does not reveal any confidential information that allows identification of any company involved.

This report is one which is also available on the Department's website at [www.rev.state.ne.us](http://www.rev.state.ne.us). If you have any questions regarding this report, please contact me.

Sincerely,

Mary Jane Egr  
State Tax Commissioner

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Section 77-5544 (2) states the purpose of the audit.

(2) The purpose of the audit is to examine information collected by the department in order to determine:

(a) The extent the data collected from the companies receiving benefits is verified;

(b) The extent to which the projects receiving benefits from the act are in compliance with the act initially and throughout the entitlement period;

(c) Whether the requirements of the act regarding the investment threshold have been attained and maintained by the companies;

(d) Whether and to what extent new employees are added by the companies to their workforce and employed at the project locations;

(e) Whether and to what extent the new jobs created meet the minimum compensation requirements of the act;

(f) The industry or industries in which the new jobs are created, by North American Industry Classification System Code;

(g) The extent to which the minimum new job threshold of the act has been attained and maintained by the companies;

(h) By category of spending, what is purchased by the companies that is claimed as qualified investments; and

(i) Gross sales from output of the project if reasonably determinable.

As of the date records were examined on November 22, 2004, no applicants had received credits under the Invest Nebraska Act. Ten applications had been approved by the board and one application is scheduled to be reviewed by the board at their December 22, 2004 meeting.

The examination of this program consisted of a review of the following areas:

1) Completeness of applications in compliance with the statutory requirements;

2) Actions of the department within the sixty-day time frame established by statute; and

3) Activity of the Invest Nebraska Fund in relationship to the application fee.

#### Examinations of Applications

To comply with the requirements in section 77-5544, the applications were examined to determine whether they met the

requirements in section 77-5534 (2). These statutory requirements were met in all areas except with regards to section 77-5534(2)(h). Five of the applications failed to document the "average salaries expected by category for the new employees to be employed at the project" as stated in statute 77-5534(2)(h). The department sent a followup letter December 3, 2004 to each of these applicants requesting this information and informing the applicant that the information must be received before approval of any benefits.

**Department's Response:** The Department has required that all applicants provide information in the application regarding the number of new employees and the average wages for the employees to be added. We also ensured that each applicant understood that only those employees earning above certain wage levels would be eligible to be counted and could be used in the computation of benefits.

If the company only provided wage information for all of the employees to be added, the Department did not require further information regarding wages for the various types of employees that were being added at the project. The Department will change the application checklist on its website to require that the information on average wages will be broken down by at least some minimal categories such as administrative, clerical, managerial, production, and other. The Department will not consider an application complete until the average wages by category are provided.

#### Approval of Application Process

As per section 77-5535(2)(b) a notice of the meeting of the board to approve any application shall be published at least ten days before the meeting and in at least six newspapers across the state. Per examination of the records, the department complied with this requirement.

Subsequent to the board meeting, the department is also required to notify the applicant of the board's action. Section 77-5535(2)(c) requires the department to notify the applicants:

. . . in writing as to whether the board has approved or not approved the application. The board shall decide and such notice shall be mailed within sixty days after receipt of the application, unless such time is extended by mutual written consent of the Tax Commissioner and the company.

Per examination of the records, all applications were approved by the board within sixty days from the receipt of the completed application or within the agreed upon extension date. Notification of board approval was mailed to all applicants within this sixty-day time frame except for two notifications, one of which was mailed four days past the sixty day requirement and one which was mailed eleven days past the agreed upon extension date.

**Department's Response:** It had been our understanding that the Board meeting had to be held and the Board had to make a determination on the application within the 60-day period or a time mutually agreed upon by both parties. At the Board meeting, the Board always acted upon the application and the applicant was always present to hear the decision of the Board. The letter notice by the Tax Commissioner had historically been prepared at the same time as the meeting minutes were sent to the board members.

We concur with the interpretation of the auditor. This error will be corrected in the future by mailing the Tax Commissioner's notice to the applicant immediately after the meeting.

#### Application Fee

The Invest Nebraska Fund, in which the application fees are to be deposited, was examined. The examination discovered that one application fee received in late 2002 was incorrectly placed in the Individual Income Tax Fund. The department discovered this error in February 2003 and attempted to correct it at that time. However, the correcting entry placed the fee into the Highway Trust Fund in error. On November 30, 2004, a second correcting entry placed the fee into the Invest Nebraska Fund.

**Department's Response:** We concur that a typographical error resulted in the misdirection of the fee deposit.

#### Conclusion

Although this review discovered some irregularities as previously mentioned, these were not material and were determined to have no detrimental impact on the Invest Nebraska program. It was determined that the Nebraska Department of Revenue is materially in compliance with the Invest Nebraska Act.